

public office again, and after everything we have seen this week, I hope, I pray, and I believe that he will meet the unambiguous rejection by the American people.

Six hours after the attack on January 6, after the carnage and mayhem was shown on every television screen in America, President Trump told his supporters to “Remember this day forever.” I ask the American people to heed his words. Remember that day forever but not for the reasons the former President intended. Remember the panic in the voices over the radio dispatch, the rhythmic pounding of fists and flags at the Chamber doors. Remember the crack of a solitary gunshot. Remember the hateful and racist Confederate flag flying through the halls of our Union. Remember the screams of the bloody officer crushed between the onrushing mob and a doorway to the Capitol, his body trapped in the breach. Remember three Capitol Police officers who lost their lives. Remember that those rioters actually succeeded in delaying Congress from certifying the election. Remember how close our democracy came to ruin.

My fellow Americans, remember that day, January 6, forever, the final, terrible legacy of the 45th President of the United States and undoubtedly our worst. Let it live on in infamy, a stain on Donald John Trump that can never, never be washed away.

On Monday we will recognize Presidents Day. Part of the commemoration in the Senate will be the annual reading of Washington’s Farewell Address. Aside from winning the Revolutionary War, I consider it his greatest contribution to American civil life, and it had nothing to do with the words he spoke but the example it set.

Washington’s Farewell Address established for all time that no one had the right to the Office of the Presidency, that it belonged to the people. What an amazing legacy. What an amazing gift to the future generations, the knowledge that this country will always be greater than any one person, even our most renowned. That is why Members of both parties take turns reading Washington’s address once a year in full into the RECORD, to pledge common attachment to the selflessness at the core of our democratic system.

This trial was about the final acts of a President who represents the very antithesis of our first President and sought to place one man before the entire country: himself.

Let the record show—let the record show before God, history, and the solemn oath we swear to the Constitution that there was only one correct verdict in this trial: guilty. And I pray that while justice was not done in this trial, it will be carried forward by the American people, who, above any of us in this Chamber, determine the destiny of our great Nation.

I yield the floor.

(Mr. PADILLA assumed the Chair.)

## RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER (Mr. KAINE). The Republican leader is recognized.

## IMPEACHMENT

Mr. MCCONNELL. Mr. President, January 6 was a disgrace. American citizens attacked their own government. They used terrorism to try to stop a specific piece of domestic business they did not like. Fellow Americans beat and bloodied our own police. They stormed the Senate floor. They tried to hunt down the Speaker of the House. They built a gallows and chanted about murdering the Vice President. They did this because they had been fed wild falsehoods by the most powerful man on Earth because he was angry he lost an election.

Former President Trump’s actions preceding the riot were a disgraceful—disgraceful—dereliction of duty.

The House accused the former President of “incitement.” That is a specific term from the criminal law.

Let me just put that aside for a moment and reiterate something I said weeks ago. There is no question—none—that President Trump is practically and morally responsible for provoking the events of the day. No question about it. The people who stormed this building believed they were acting on the wishes and instructions of their President, and having that belief was a foreseeable consequence of the growing crescendo of false statements, conspiracy theories, and reckless hyperbole which the defeated President kept shouting into the largest megaphone on planet Earth.

The issue is not only the President’s intemperate language on January 6. It is not just his endorsement of remarks in which an associate urged “trial by combat.” It was also the entire manufactured atmosphere of looming catastrophe; the increasingly wild myths—myths—about a reverse landslide election that was somehow being stolen in some secret coup by our now-President.

Now, I defended the President’s right to bring any complaints to our legal system. The legal system spoke. The electoral college spoke. As I stood up and said clearly at that time, the election was settled. It was over. But that just really opened a new chapter of even wilder—wilder—and more unfounded claims.

The leader of the free world cannot spend weeks thundering that shadowy forces are stealing our country and then feign surprise when people believe him and do reckless things.

Now, sadly, many politicians sometimes make overheated comments or use metaphors—we saw that—that unhinged listeners might take literally, but that was different. That is different from what we saw. This was an intensifying crescendo of conspiracy theories, orchestrated by an outgoing

President who seemed determined to either overturn the voters’ decision or else torch our institutions on the way out.

The unconscionable behavior did not end when the violence actually began. Whatever our ex-President claims he thought might happen that day, whatever reaction he says he meant to produce, by that afternoon, we know he was watching the same live television as the rest of us. A mob was assaulting the Capitol in his name. These criminals were carrying his banners, hanging his flags, and screaming their loyalty to him.

It was obvious that only President Trump could end this. He was the only one who could. Former aides publicly begged him to do so. Loyal allies frantically called the administration. The President did not act swiftly. He did not do his job. He didn’t take steps so Federal law could be faithfully executed and order restored. No. Instead, according to public reports, he watched television happily—happily—as the chaos unfolded. He kept pressing his scheme to overturn the election.

Now, even after it was clear to any reasonable observer that Vice President Pence was in serious danger, even as the mob carrying Trump banners was beating cops and breaching perimeters, the President sent a further tweet attacking his own Vice President. Now, predictably and foreseeably under the circumstances, members of the mob seemed to interpret this as a further inspiration to lawlessness and violence, not surprisingly.

Later, even when the President did halfheartedly begin calling for peace, he didn’t call right away for the riot to end. He did not tell the mob to depart until even later. And even then, with police officers bleeding and broken glass covering Capitol floors, he kept repeating election lies and praising the criminals.

In recent weeks, our ex-President’s associates have tried to use the 74 million Americans who voted to reelect him as a kind of human shield against criticism—using the 74 million who voted for him as kind of a human shield against criticism. Anyone who decries his awful behavior is accused of insulting millions of voters. That is an absurd deflection. Seventy-four million Americans did not invade the Capitol. Hundreds of rioters did. Seventy-four million Americans did not engineer the campaign of disinformation and rage that provoked it. One person did it—just one.

Now, I have made my view of this episode very plain. But our system of government gave the Senate a specific task. The Constitution gives us a particular role. This body is not invited to act as the Nation’s overarching moral tribunal. We are not free to work backward from whether the accused party might personally deserve some kind of punishment.

Justice Joseph Story was our Nation’s first great constitutional scholar. As he explained nearly 200 years

ago, the process of impeachment and conviction is a narrow tool—a narrow tool—for a narrow purpose. Story explained this limited tool exists to “secure the state against gross official misdemeanors”; that is, to protect the country from government officers.

If President Trump were still in office, I would have carefully considered whether the House managers proved their specific charge. By the strict criminal standard, the President's speech probably was not incitement. However—however—in the context of impeachment, the Senate might have decided this was acceptable shorthand for the reckless actions that preceded the riot. But in this case, the question is moot because former President Trump is constitutionally not eligible for conviction.

Now, this is a close question, no doubt. Donald Trump was the President when the House voted, though not when the House chose to deliver the papers. Brilliant scholars argue both sides of this jurisdictional question. The text is legitimately ambiguous. I respect my colleagues who reached either conclusion.

But after intense reflection, I believe the best constitutional reading shows that article II, section 4 exhausts the set of persons who can legitimately be impeached, tried, or convicted. It is the President. It is the Vice President and civil officers. We have no power to convict and disqualify a former office holder who is now a private citizen.

Here is article II, section 4: “The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”

Now, everyone basically agrees that the second half of that sentence exhausts the legitimate grounds for conviction. The debates around the Constitution's framing make that abundantly clear. Congress cannot convict for reasons besides those. It therefore follows that the list of persons in that same sentence is also exhaustive. There is no reason why one list—one list—would be exhaustive but the other would not.

Article II, section 4 must limit both why impeachment and conviction can occur and to whom—and to whom. If this provision does not limit impeachment and conviction powers, then it has no limits at all. The House's “sole power of Impeachment” and the Senate's “sole Power to try all Impeachments” would create an unlimited circular logic, empowering Congress to ban any private citizen from Federal office.

Now, that is an incredible claim. But it is the argument the House managers seemed to be making. One manager said the House and Senate have “absolute, unqualified . . . jurisdictional power.” Well, that was very honest, because there is no limiting principle in the constitutional text that would em-

power the Senate to convict former officers that would not also let them convict and disqualify any private citizen—an absurd end result to which no one subscribes.

Article II, section 4 must have force. It tells us the President, the Vice President and civil officers may be impeached and convicted. Donald Trump is no longer the President.

Likewise, the provision states that officers subject to impeachment and conviction “shall be removed from Office if convicted”—“shall be removed from Office if convicted.”

As Justice Story explained, “the Senate, [upon] conviction, [is] bound in all cases, to enter a judgment of removal from office.” Removal is mandatory upon conviction. Clearly, he explained, that mandatory sentence cannot be applied to someone who has left office. The entire process revolves around removal. If removal becomes impossible, conviction becomes insensible.

In one light, it certainly does seem counterintuitive that an officeholder can elude Senate conviction by resignation or expiration of term—an argument we heard made by the managers. But this underscores that impeachment was never meant to be the final forum for American justice—never meant to be the final forum for American justice. Impeachment, conviction, and removal are a specific intragovernmental safety valve. It is not the criminal justice system, where individual accountability is the paramount goal.

Indeed, Justice Story specifically reminded that while former officials were not eligible for impeachment or conviction, they were—and this is extremely important—“still liable to be tried and punished in the ordinary tribunals of justice.”

Put another way, in the language of today, President Trump is still liable for everything he did while he was in office, as an ordinary citizen—unless the statute of limitations is run, still liable for everything he did while he was in office. He didn't get away with anything yet—yet. We have a criminal justice system in this country. We have civil litigation, and former Presidents are not immune from being accountable by either one.

I believe the Senate was right not to grab power the Constitution doesn't give us, and the Senate was right not to entertain some light-speed sham process to try to outrun the loss of jurisdiction.

It took both sides more than a week just to produce their pretrial briefs. Speaker PELOSI's own scheduling decisions conceded what President Biden publicly confirmed: A Senate verdict before Inauguration Day was never possible.

Now, Mr. President, this has been a dispiriting time, but the Senate has done our duty. The Framers' firewall held up again. On January 6, we returned to our post and certified the election. We were uncowed. We were

not intimidated. We finished the job. And, since then, we resisted the clamor to define our own constitutional guardrails in hot pursuit of a particular outcome. We refused to continue a cycle of recklessness by straining our own constitutional boundaries in response.

The Senate's decision today does not condone anything that happened on or before that terrible day. It simply shows that Senators did what the former President failed to do: We put our constitutional duty first.

The PRESIDING OFFICER. The Senator from Maryland.

## IMPEACHMENT

Mr. CARDIN. Mr. President, I take this time to explain why I voted to convict the former President of the United States, Donald Trump, of the Article of Impeachment presented by the House of Representatives in regards to the incitement of insurrection.

Throughout his Presidency, Donald J. Trump has violated his oath of office to preserve, protect, and defend the Constitution of the United States. There are many examples that I can give of how he has violated his oath of office. I could also cite the basis of the first Articles of Impeachment that were tried last year as violating his oath of office. But, by far, the most egregious violation of his oath of office took place in his incitement of insurrection that occurred with the attack on this Capitol on January 6.

But it started well before January 6. The seeds were planted a long time ago and even before the November elections, when President Trump pointed out, when the polls were showing that he might lose in the election, that he refused to acknowledge that he would accept the election results if he lost. He didn't say that once before the November elections, he said it on several occasions. He talked about a rigged election. He talked about a fraudulent election. He talked about the election being “taken away from us”—the victory—with no evidence of voter fraud.

One of the key provisions of our Constitution, of our democracy, is the peaceful transition of power. Donald Trump called that into question prior to the November 3 elections.

Then came the November 3 elections, and, shortly thereafter, Joe Biden was declared to be the winner. Why? Because he had the most votes—most populace votes—over 7 million. But he was declared the winner because of the electoral votes, 306 to 232. By the way, that is the same electoral margin that Donald Trump won 4 years earlier and which Donald Trump called a “landslide.”

But then came the legal challenges by President Trump. He didn't accept the electoral vote or the declared elections. And he has his right to contest the elections in the court by asking for recounts or asking for challenges, but in every one of those cases, he could